IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON
DIVISION 2

In re Personal Restraint Petition of:	Case No. 38600-3-II
GARY D. MEREDITH, Petitioner.	**PERSONAL RESTRAINT PETITION**

If there is not enough room on this form, use other pages and write "See Attached." Fill out this entire form before you sign this form in front of a notary public (free in the law library).

A. STATUS OF PETITIONER

I, GARY DANIEL MEREDITH ; STAFFORD CREEK CORRECTIONS
(*Full name and current address*)
CENTER, 191 CONSTANTINE WAY, ABERDEEN, WA 98520

apply for relief from confinement. **I am** now in custody serving a sentence on conviction of a crime. I am now in custody because of a *Judgment and Sentence*.

1. The court in which I was sentenced is: PIERCE COUNTY SUPERIOR COURT.

2. I was convicted of the crime(s) of: Rape of a child 2 ; Communication with a Minor for Immoral Purposes.

3. I was sentenced after (*check one*) Trial X Plea of Guilty ____ on 11/21/08.
(*Date of sentence*)

4. The Judge who imposed sentence was HONORABLE VICKI L. HOGAN.

5. My lawyer at trial court was BRETT PURTZER, LAW OFFICES OF
(*Name and address if known*)
MONTE E. HESTER, 1008 S. YAKIMA AVE, SUITE 302 TACOMA, WA 98405.

6. I did X did not ____ appeal from the decision of the trial court. If I did appeal, I appealed to: WA STATE COURT OF APPEALS DIVISION 2 .

(*Name of court or courts to which appeal took place*)

7. My lawyer for my appeal was: JAMES LOBSENZ, 701 FIFTH AVE, SUITE 3600 SEATTLE, WA 98104.
(*Name and address if known or write "none"*)

The decision of the appellate court was X was not ____ published. (If the answer is that it *was* published, and I have this information) the decision is published in ____

State v. Meredith, 163 Wn. App. 75 (Div. 2 2011).

8. Since my conviction I have X have not ____ asked a court for some relief from my sentence other than I have already written above. (If the answer is "I have asked a court", the court I asked was WA STATE SUPREME COURT. Relief was denied on
(*Name of court*)

8/08/13; MOTION FOR RECONSIDERATION denied on 10/04/13; MANDATE 10/15/13.
(*Date of Decision or, if more than one, all dates*)

(If you have answered in question 8 that you did ask for relief), the name of your lawyer in the proceedings mentioned in my answer was JAMES LOBSENZ
(*Name and address if known*)

701 FIFTH AVE, SUITE 3600 SEATTLE, WA 98104.

9. If the answers to the above questions do not really tell about the proceedings and the courts, judges and attorneys involved in your case, tell about it here:

Petition for certiorari filed in U.S. Supreme Court on 12/26/13.

Certiorari was denied on 02/24/14.

B. GROUNDS FOR RELIEF:

(If I claim more than one reason for relief from confinement, I will attach sheets for each separately, in the same was as the first one. The attached sheets should be numbered "First Ground", "Second Ground", Third Ground", etc.). I claim that I have 5 reason(s) for this court to grant me relief from the conviction and sentence described in Part A.

First Ground
(First, Second, etc.)

1. I should be given a new trial or released from confinement because (State legal reasons why you think there was some error made in your case which gives you the right to a new trial or release from confinement): Counsel was ineffective for failing to properly preserve Meredith's claim as to the admissibility of evidence regarding the frequency of positive blue light exams in sexual assault cases.
2. The following facts are important when considering my case. (After each fact statement put the name of the person or person who know the fact and will support your statement of the fact. If the fact is already in the record of your case, indicate that also) See imminent brief in support of PRP.
3. The following reported court decisions (indicate citations) in cases similar to mine show the error I believed happened in my case: See imminent brief in support of PRP.
4. The following statutes and constitutional provisions should be considered by the court: See imminent brief in support of PRP.
5. This petition is the best way I know to get the relief I want, and no other way will work as well because: See imminent brief in support of PRP.

C. STATEMENT OF FINANCES:

I cannot afford to pay the $250 filing fee or cannot afford to pay an attorney to help me fill out this form. I have attached a certified copy of my prison finance statement (trust account).

1. I do X do not ____ ask the court to file this without making me pay the $250 filing fee because I am so poor and cannot pay the fee.
2. I have $ 0.00 in my prison or institution account. (Attach ***certified*** six month statement of inmate trust account, available from inmate accounting.)
3. I do X do not ____ ask the court to appoint a lawyer for me.
4. I am ____ am not X employed. My salary or wages amount to $ 0.00 a month. My employer is:

_____.
(Name and address of employer)

5. During the past 12 months I did ____ did not X get any money from a business, profession or other form of self-employment. (If I did, I got a total of $ _____.
6. During the past 12 months I:

   Did ___ did not X receive any rent payments. If so, the total I received was $_____.

   Did ___ did not X receive any interest. If so, the total I received was $_____.

   Did ___ did not X receive any dividends. If so, the total I received was $_____.

   Did ___ did not X receive any other money. If so, the total I received was $_____.

   Did ___ did not X have any cash except as noted in (C)(2) above. If I do, the total cash I have is: $

   Did ___ did not X have savings or checking account. If so, total in all accounts is $_____.

   Did ___ did not X own stocks, bonds, or notes. If so, their total value is $_____.

7. List all real estate and other property or things of value which belong to you or in which you have an interest. Tell what each item or property is worth and how much you owe on it. Do not list household furniture, furnishings, and clothing which you or your family own.

Items *Value*

None.

8. I am ___ am not X married. If I am, my wife or husband's name and address is:

9. All of the persons who need me to support them are listed below:

Name & Address	Relationship	Age
None.		

10. All the bills I owe are listed here:

Name & Address of creditor		Amount
Legal Financial Obligations	Dept. of Corrections	$8718.52

D. REQUEST FOR RELIEF:

I want this court to:

__X__ Vacate my conviction and give me a new trial.

____ Vacate my conviction and dismiss the criminal charges against me without a new trial.

__X__ Order a RAP 16.12 Superior Court evidentiary hearing to determine the merits of each one of my claims to include any evidence not presented in the criminal trial.

____ Other: _____

(*Please specify*)

E. OATH OF PETITIONER

STATE OF WASHINGTON)
) ss.
COUNTY OF GRAY'S HARBOR)

After being first duly sworn, on oath, I depose and say: That I am the petitioner, that I have read the petition, know its contents and I affirm the contents of this petition are true and correct under penalty of perjury of the laws of the State of Washington.

Gary Meredith

GARY D. MEREDITH

DOC # 984777, UNIT H4-B42
STAFFORD CREEK CORRECTION CENTER
191 CONSTANTINE WY
ABERDEEN WA 98520

I, GARY MEREDITH, am over the age of majority and am also a U.S. citizen competent to testify and herein attest under penalty of perjury that all the statements contained herein is the absolute truth.

Affidavit pursuant to 28 U.S.C. § 1746 and UNITED STATES v. KARR 928 F.2d 1138 (9th Cir. 1981) sworn as true and correct under penalty of perjury has full force of and is not required to be verified by notary of public.

Respectfully submitted this 4th day of August, 2014, in the State of Washington.

No Notary Public was available on this date, August 4th, 2014

Gary Meredith 984777
Gary Meredith 984777

PLRA IN FORMA PAUPERIS STATUS REPORT
FOR DEFINED PERIOD : 12/31/2013 TO 06/30/2014

DOC# : 0000984777 **NAME :** MEREDITH GARY **ADMIT DATE :** 11/25/2008

DOB : 06/13/1970 **ADMIT TIME :** 10:46

AVERAGE MONTHLY RECEIPTS	20% OF RECEIPTS	AVERAGE SPENDABLE BALANCE	20% OF SPENDABLE
37.17	7.43	5.38	1.08

STATE OF WASHINGTON
DEPARTMENT OF CORRECTIONS
OFFICE OF CORRECTIONAL OPERATIONS
STAFFORD CREEK CORRECTION CENTER
CERTIFIED BY:

Second **Ground**

1. Counsel was ineffective for failing to properly preserve Meredith's claim as to excluded evidence regarding DNA testing.

2. See imminent of brief in support of PRP.

3. See imminent brief in support of PRP.

4. See imminent brief in support of PRP.

5. See imminent brief in support of PRP.

Third **Ground**

1. Counsel was ineffective for failing to properly preserve for appeal any evidentiary issues regarding Dr. Sipe's reliance on laboratory results during her testimony.

2. See imminent brief in support of PRP.

3. See imminent brief in support of PRP.

4. See imminent brief in support of PRP.

5. See imminent brief in support of PRP.

Forth **Ground**

1. Cumulative effect of ineffective assistance of counsel issues.

2. See imminent brief in support of PRP.

3. See imminent brief in support of PRP.

4. See imminent brief in support of PRP.

5. See imminent brief in support of PRP.

Fifth **Ground**

1. Misjoinder of Counts I and II.

2. See imminent brief in support of PRP.

3. See imminent brief in support of PRP.

4. See imminent brief in support of PRP.

5. See imminent brief in support of PRP.

DECLARATION OF SERVICE BY MAIL
GR 3.1

I, GARY MEREDITH, declare and say:

That on the 4TH day of August, 2014, I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, with First Class U.S. Mail, pre-paid postage affixed, under cause No. 95-1-04949-6:

PERSONAL RESTRAINT PETITION COA DIV. II NO.

addressed to the following:

WA STATE COURT OF
APPEALS, DIVISION II
950 Broadway, Ste. 300
TACOMA, WA 98402

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my belief.

DATED THIS 4TH day of August, 2014, in the City of Aberdeen, County of Grays Harbor, State of Washington.

Signature

GARY MEREDITH
Printed Name
c/o [DOC 984777 UNIT H4-B42
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN WA (98520)]

NO. 38600-3-II

COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION TWO

STATE OF WASHINGTON

v.

GARY D. MEREDITH

BRIEF IN SUPPORT OF PERSONAL RESTRAINT PETITION

GARY MEREDITH

DOC # 984777, H4-B42

STAFFORD CREEK CORRECTIONS CENTER

191 CONSTANTINE WAY

ABERDEEN, WA 98520

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A. IDENTITY OF PETITIONER

GARY DANIEL MEREDITH, Petitioner, DOC # 984777, is currently incarcerated at Stafford Creek Corrections Center in Aberdeen, Washington.

B. STATEMENT OF THE CASE

Gary Meredith was convicted, after a jury trial, of one count of second degree child rape and one count of communication with a minor for immoral purposes.

The date of crime for both offenses was 10/29/94. Meredith was convicted on 6/10/96. He was sentenced to 198 months confinement on 11/21/08.

C. ISSUES PRESENTED

1. LEGAL STANDARD

"In order to prevail in a collateral attack on a judgement, a petitioner must show that more likely than not he was prejudiced by that error." In re Hagler, 97 Wn. 2d 818, 650 P. 2d 1103 (1982)(quoting State v. Brune, 45 Wn. App. 354, 725 P. 2d 454 (1986). Some errors which result in per se prejudice on direct review will also be per se prejudicial on collateral attack. In re Personal Restraint St. Pierre, 118 Wn. 2d 321, 823 P. 2d 492 (1992).

2. DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO MAKE AN OFFER OF PROOF AS TO THE ADMISSIBILITY OF EVIDENCE REGARDING THE FREQUENCY OF POSITIVE BLUE LIGHT EXAMS IN SEXUAL ASSAULT CASES.

To demonstrate ineffective assistance of counsel, a defendant must satisfy the two-prong test laid out in Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984); see also State v. Thomas, 109 Wn.2d 222, 743 P.2d 816 (1987). First, a defendant must demonstrate that his attorney's representation fell below an objective standard of reasonableness. Second, a defendant must show that he was prejudiced by the deficient representation. Prejudice exists if there is a reasonable probability that, except for counsel's unprofessional errors, the result of the proceeding would have been different. U.S. Const. Amend. 6; State v. McFarland, 127 Wash.2d 322, 335, 899 P.2d 1251 (1995).

During Meredith's trial, the court sustained the State's "relevance" objection to defense counsel's cross-examination of nurse Ms. Russell about the incidence of positive blue light tests in sex cases. RP 433-34. On direct appeal, Meredith assigned error to the trial court's refusal to permit cross-examination. This court did not decide that issue on its merits, instead this court held that if the trial court did error by disallowing the desired cross-examination, the error was harmless.

Meredith argues that his trial counsel was deficient in that he did not make an offer of proof sufficient to satisfy the requirements of ER 103(a).

ER 103(a)(2) provides:

An offer of proof serves three purposes:
(1) it informs the court of the relevant legal theory under which evidence is offered;
(2) it gives the specific nature of the evidence so that the court can assess its admissibility; and
(3) it creates a record for review.

Had counsel made an offer of proof to the relevancy of the evidence he desired to adduce from Ms. Russell, Meredith argues he would have been permitted to cross-examine Ms. Russell about it.

By failing to offer either orally or in writing what evidence he expected to adduce from Ms. Russell regarding blue light exams, defense counsel failed to create an adequate record for review. Counsel did not state on the record how the frequency of positive blue light tests during sexual assault exams had any relevance to whether or not intercourse happened between Ms. Lapic and Meredith as it was alleged to have occurred approximately three hours prior to the exam.

Meredith claims his counsel's representation was deficient and fell below an objective standard of reasonableness. Meredith claims his counsel's deficient performance prejudiced him as it is impossible to know the complete nature of the excluded evidence and its relative importance to Meredith's defense.

3. DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO MAKE AN OFFER OF PROOF AS TO THE ADMISSIBILITY OF EVIDENCE REGARDING DNA TESTING.

During cross-examination of nurse Russell, defense counsel twice asked her if one of the purposes of taking vaginal swabs was to conduct a DNA analysis on them. On both occasions, the State successfully objected. RP 437-39.

Meredith argues that defense counsel offered no proof as to the full extent of the DNA evidence he intended to adduce from nurse Russell. He had no idea what evidence Ms. Russell would be able to provide on the subject, and therefore could not provide the court with a proper offer of proof.

The following day, counsel asked Dr. Sipes whether the vaginal swabs were "taken for purposes of DNA" and Dr. Sipes answered "yes." RP 503. However, the State's objection ("same objection as yesterday") was sustained and the trial judge struck Dr. Sipes' answer and instructed the jury to disregard it. RP 503-04.

On direct appeal, Meredith assigned error to the trial court's prohibiting cross-examination about the absence of DNA testing. This court ruled that if the trial court erred in prohibiting testimony about the purpose of the vaginal swabs, the error was harmless.

Again, Meredith argues counsel made no offer of proof as to the nature or admissibility of this evidence as it pertained to Dr. Sipes. By failing to make an offer of proof sufficient to satisfy the requirements of ER 103(a)(2), counsel failed to create an adequate record for appeal.

Had counsel made an offer of proof for the admission of the evidence regarding the vaginal swabs and lack of any DNA testing, Meredith argues he would have been permitted to cross-examine Dr. Sipes about that.

Meredith claims his counsel's representation was deficient and fell below an objective standard of reasonableness. Meredith claims his counsel's deficient performance prejudiced him, that except for counsel's unprofessional errors, the result of his trial would have been different.

4. MEREDITH CLAIMS HE WAS UNDULY PREJUDICED BY PROSECUTORIAL MISCONDUCT WHEN THE PROSECUTOR MISSTATED MEDICAL FACTS THAT GO TO THE HEART OF MEREDITH'S DEFENSE DURING CLOSING ARGUMENT.

Prosecutorial misconduct may deprive a defendent of his constitutional rights to a fair trial. U.S. Const. Amend. 6 and 14; Wash. Const. art. 1, sec. 22.

In order to prevail on an allegation of prosecutorial misconduct, a defendant must show both improper conduct and prejudicial effect. A defendant establishes prejudice on a claim of prosecutorial misconduct only if there is a substantial likelihood the instances of misconduct affected the jury's verdict. State v. Thach, 126 Wn. App. 297, 106 P. 3d 782 (Div. 2 2005).

During closing argument the prosecutor misstated medical facts as previously testified to by Dr. Sipes:

[Prosecutor]: Now, we have the presence of sperm and we are one option only for how that sperm got there. That was sexual intercourse that night. RP 566.

The prosecutor's statement completely misconstrued that of Dr. Sipes' testimony on cross-examination:

[Meredith]: [C]an you tell by your findings when the time period, when this intercourse occurred, if indeed that did occur?
[Dr. Sipes]: I generally believe that semen is recovered from the vaginal vault up to three days following intercourse.

[Meredith]: And so it could mean that it was three days prior that the intercourse, if it did occur, would occur?
[Dr. Sipes]: Right
[Meredith]: You cannot tell by reasonable medical certainty as to when this particular intercourse, if it did occur, happened?
[Dr. Sipes]: Right. RP 503

The prosecutor's misstatement that the presence of sperm leaves only one option that sexual intercourse happened that night contradicts Dr. Sipes' previous testimony stating the fact that the presence of semen, consisting of only non-motile sperm, means that intercourse could have happened up to three days prior to the night that intercourse was alleged to have occurred.

The potential impact of this misstatement cannot be over-stated. The misstatement by the prosecutor was a crucial part of the State's case and Meredith's defense.

The prejudicial effects of such a flagrant misstatement of a medical fact become amplified in closing arguments because it is one of the last things a jury hears and takes with them into deliberations.

Meredith contends that the prosecutor's misstatement in closing arguments was also ill-intentioned because the prosecutor was well aware of the previous testimony of the State's witness, Dr. Sipes, that the findings of semen means intercourse could have happened up to three days prior to Ms. Lapic's physical exam. The prosecutor's flagrant misstatement that the presence of sperm means that intercourse could only have happened that night was ill-intentioned because it drastically closed the

window of time that the jury could consider, when taking into account the laboratory findings evidence, from 3 days down to only the night of the alleged incident, essentially creating a virtual "slam dunk" for the State to have the jury convict Mr. Meredith.

The U.S. Supreme Court in U.S. v. Young said, "It is unprofessional conduct for the prosecutor intentionally to misstate the evidence or mislead the jury as to the inference it may draw..." The prosecutor's remarks unfairly prejudiced the jury's deliberations. U.S. v. Young, 470 U.S. 1, 7 (1985).

It's Meredith's belief that the prosecutor did not just happen to inadvertently misspeak, as he was well aware of the physical evidence and the medical interpretations of that evidence given by Dr. Sipes, the State's witness.

Meredith contends that the prosecutor's misstatement in closing arguments constituted prosecutorial misconduct that so infected his trial with unfairness that it rendered his trial fundamentally unfair and resulted in denial of due process. U.S. Const. Amend. 14 ; Wash. Const. art. 1, sec. 3.

The prosecutor's flagrant and ill-intentioned improper misstatement was so prejudicial to Meredith that no curative instruction would have obviated any prejudicial effect on the jury and had a substantial likelihood of affecting the jury's verdict.

Meredith respectfully requests his case be reversed and remanded for a new trial.

5. INEFFECTIVE ASSISTANCE OF COUNSEL

Next, Meredith argues, in the alternative, that defense counsel was ineffective for failing to object to the prosecutor's alleged misstatement of the evidence.

Meredith contends that there was no legitimate strategic or tactical rationale for defense counsel to fail to object when the prosecutor made a flagrant and ill-intentioned misstatement of Dr. Sipes' previous testimony as to her conclusion of what the laboratory findings mean.

Failing to object to the prosecutor's misconduct caused substantial prejudice to Meredith that, except for counsel's unprofessional errors, the result of the proceeding would have been different. U.S. Const. Amend. 6.

Meredith respectfully requests this court to reverse and remand for a new trial.

6. DEFENSE COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT DURING CLOSING ARGUMENT TO MULTIPLE INSTANCES OF PROSECUTORIAL MISCONDUCT WHEN THE PROSECUTOR EXPRESSED HIS PERSONAL OPINION ABOUT THE CREDIBILITY OF WITNESSES AND THE GUILT OF THE ACCUSED.

Where a prosecutor during closing argument gives a personal opinion on the credibility of witnesses, misconduct occurs. State v. Swan, 114 Wn.2d 613, 664, 790 P.2d 610; State v. Reed, 102 Wn.2d 140, 145, 684 P.2d 699 (1984).

Failing to object to a claim of prosecutorial misconduct waives the objection unless the prosecutor's comment[s] was so flagrant or ill-intentioned that it caused an enduring prejudice that could not be cured by instruction. State v. Thach, 126 Wn. App. 297.

To show that counsel provided ineffective assistance, a defendant must show: (1) defense counsel's representation was deficient; and (2) defense counsel's deficient representation prejudiced the defendant. State v. McFarland, 127 Wn.2d 322, 334-35, 899 P.2d 1251 (1995); Strickland v. Washington, 466 U.S. 668 (1984).

In general, a prosecutor errs by expressing a "personal opinion about the credibility of a witness and the guilt or innocence of the accused [.]" State v. Sargent, 40 Wn. App. 340, 343-44, 698 P.2d 598 (1985). State v. Reed, 102 Wash. 2d 140, 145, 684 P.2d 699 (1984).

In closing argument, the prosecutor continually vouched for the credibility of the State's witnesses when he stated:

[Prosecutor]: "These girls did not cook that up. There is no collusion here. You see no evidence of deception, that they all made it up. If they didn't make it up, it's true." RP 568.

[Prosecutor]: "Now ask yourself if this is something that these four girls have just cooked up. Could they cook up that detail, could they report it in that credible of a manner to you a year and a half later, the answer is absolutely not." RP 570-71.

[Prosecutor]: "They are not making up anything. They are not fabricating this to get out of any trouble." RP 571.

Just as it "is improper for a prosecutor personally to vouch for the credibility of a witness," it is improper for a prosecutor to personally vouch against the credibility of a witness. State v. Brett, 126 Wn. 2d 136, 175, 892 P. 2d 29 (1995).

During closing arguments, the prosecutor expressed his personal opinion when he personally vouched against the defense's sole witness, stating:

[Prosecutor]: "... it's beyond reasonable doubt comprehension to believe what Jason told us this morning[.]" RP 563.

[It] is improper for a prosecuting attorney, in argument, to express his or her individual opinion that the accused is guilty, independent of the testimony of the case[.] State v. McKenzie, 157 Wn. 2d 44, 134 P. 3d 221 (2006).

In closing argument, the prosecutor expressed his personal opinion of the defendant's guilt, stating:

[Prosecutor]: "It's what he was guilty of before the rape happened." RP 562.

[Prosecutor]: "The defendant is just as guilty as if it had happened the other way." RP 574

[Prosecutor]: "And it's the truth that the defendant is guilty period." RP 568

This is "an attempt to impress upon a jury the prosecutor's

personal belief in the defendant's guilt. As such, it was not only unethical but extremely prejudicial." State v. Case, 49 Wn. 2d 66, 68, 298 P. 2d 500 (1956).

Meredith contends he received ineffective assistance of counsel because defense counsel failed to object to multiple instances of prosecutorial misconduct of improper opinion evidence during closing argument.

Meredith contends that there was no legitimate strategic or tactical rationale for defense counsel to fail to object when the prosecutor expressed his personal opinion during closing argument and defense counsel's deficient conduct caused undue prejudice to Meredith that, except for counsel's unprofessional errors, the result of the proceeding would have been different. U.S. Const. Amend. 6.

Meredith respectfully requests this court to reverse and remand for a new trial.

MISCALCULATION OF OFFENDER SCORE

A. SENTENCING COURT FAILED TO MAKE THE REQUIRED DETERMINATION WHETHER TO COUNT MEREDITH'S PRIOR OFFENSES THAT WERE SERVED CONCURRENTLY AS ONE OFFENSE OR AS SEPARATE OFFENSES PURSUANT TO FORMER RCW 9.94A.360(6)(a).

FACTS RELEVANT TO ARGUMENT

On June 10, 1996, after a jury trial, Meredith was convicted of one count of second degree child rape and one count of communication with a minor for immoral purposes. The date of crime for both offenses was 10/29/94. Meredith was sentenced on 11/21/08 to 198 months. See Appendix A.

At the time of sentencing, the petitioner, Meredith, had two prior adult felony convictions, third degree rape, sentenced on 12/17/91, and third degree assault with sexual motivation, sentenced on 3/26/92. Both sentences were served concurrently with one another. See Appendix B.

In the current offense, Meredith's offender score was calculated to be 9, counting 3 points each for Meredith's prior convictions, plus 3 points for Meredith's other current offense. See Appendix A.

The sentencing judge never made a determination on the record whether to count Meredith's two prior convictions as one offense or as separate offenses as required by former RCW 9.94A.360(6)(a), the applicable statute in 1994.

ARGUMENT OF THE ISSUE

The date of crime for Meredith's current offense was October 29, 1994. Under the Sentencing Reform Act of 1981 (SRA), sentencing courts are to apply the definition of criminal history in effect at the time the offense was committed to calculate the sentence for that offense. In re LaChapelle, 153 Wn. 2d 1, 100 P. 3d 805 (2004).

Any sentence imposed under Chapter 9.94A RCW shall be determined in accordance with the law in effect when the current offense was committed. The 2000 Amendment to the SRA — Substitute Senate Bill 6182.

The incorrect calculation of an offender score constitutes a fundamental defect in sentencing resulting in a complete miscarriage of justice which requires relief in a personal restraint proceeding under RAP 16.4. In re Connick, 144 Wn. 2d 442, 465, 28 P. 3d 729 (2001). A sentencing court acts without statutory authority under the SRA when it imposes a sentence based on a miscalculated offender score. State v. Roche, 75 Wash. App. 500, 513, 878 P. 2d 497 (1994). An illegal or erroneous sentence may be challenged for the first time on appeal. State v. Ashenberger, 171 Wn. App. 237, 286, P. 3d 984 (2012). The appropriate standard of review of the sentencing court's calculation of an offender score is de novo. State v. Roche, Supra.

Former RCW 9.94A.360(6)(a) provided as follows:

In the case of multiple prior convictions, for the purposes of computing the offender score, count all convictions separately, except:

(a) Prior adult offenses which were found, under RCW 9.94A.400(1)(a), to encompass the same criminal conduct, shall be counted as one offense, the offense that yields the highest offender score. The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently whether those offenses shall

be counted as one offense or as separate offenses, and if the court finds that they shall be counted as one offense, then the offense that yields the highest offender score shall be used [.]

Former RCW 9.94A.400(1) has no application to Meredith's offender score issue because there was no showing that the previous sentencing court had determined that Meredith's prior offenses encompassed the same criminal conduct.

"[RCW 9.94A.360(6)(a)] does not restrict the current sentencing court to the previous sentencing court's determination or to the application of the same criminal conduct standard imposed pursuant to RCW 9.94A.400(1)(a)." State v. McCraw, 127 Wn.2d 281, 287, 898 P.2d 838 (1995) (quoting State v. Lara, 66 Wn. App. 927, 931, 834 P.2d 70 (Div. 3 1992).

Interpretation of a statute is a question of law that appellate court reviews de novo. State v. Ashenberger, 171 Wn. App at 237. When interpreting a statute, the court's objective is to determine the Legislature's intent. If the meaning of the statute is plain on its face, courts give effect to that plain meaning. State v. Crawford, 164 Wn. App. 617, 267 P.3d 365 (2011).

The first sentence of subsection (a) of former RCW 9.94A.360(6) consists of prior adult offenses that a previous sentencing court had determined encompassed the same criminal conduct. As previously noted, this has no application here.

The second sentence of subsection (a) consists of other prior adult offenses for which sentences were served concurrently. This sentence "refers to the duty of a sentencing court to count prior multiple offenses for which sentences were served concurrently as either one offense or separate offenses." State v. McCraw, 127 Wn.2d at 287.

The court in State v. Wright, 76 Wn. App. 811, 888 P.2d 1214 (Div. 1 1995) said: "[T]he language of the statute is mandatory, stating that the current sentencing court shall determine whether the offenses are to be counted as one or separate offenses. RCW 9.94A.360(6)(a). Because the court did not exercise its discretion to make the required determination, we remand with instructions that it do so." State v. Wright, 76 Wn. App. at 829.

The court in State v. Reinhart, 77 Wn. App. 454, 891, P. 2d 735 (Div. 2 1995) said: "[T]he language of the statute appears clear and unambiguous in mandating that the current sentencing court determine whether to count prior offenses, served concurrently, as separate offenses. The trial court did not make such a determination in this case. Thus, the appropriate remedy is remand for such determination[.]" State v. Reinhart, 77 Wn. App. at 459.

In Meredith's sentencing hearing, the judge failed to exercise the required determination on the record whether to count his prior adult offenses for which sentences were served concurrently as one offense or as separate offenses pursuant to former RCW 9.94A.360(6)(a).

[S]entencing decisions under the SRA must comport with requirements of due process. [A]ny action taken by the sentencing judge which fails to comport with due process requirements is constitutionally impermissible. State v. Herzog, 112 Wn. 2d 419, 426, 771 P. 2d 739 (1989); U.S. Const. Amend. 14, sec. 1; Wash. Const. art. 1, sec. 3.

Meredith respectfully requests this court to remand for resentencing for the required determination to be made pursuant to former RCW 9.94A.360(6)(a) of whether to count Meredith's prior concurrently served offenses as one or as separate offenses.

B. SENTENCING COURT SHOULD HAVE COUNTED MEREDITH'S PRIOR ADULT OFFENSES FOR WHICH SENTENCES WERE SERVED CONCURRENTLY AS ONE OFFENSE IN HIS OFFENDER SCORE PURSUANT TO FORMER RCW 9.94A.360(6)(a).

Meredith's two prior adult offenses for which sentences were served concurrently were counted separately as 3 points each in his offender score, plus 3 points for his other current offense, for a total offender score of 9. Meredith maintains his prior adult offenses should have been counted as one offense for a total offender score of 6.

Former RCW 9.94A.360(6)(a) provides in relevant part to Meredith's argument:

> The current sentencing court shall determine with respect to other prior adult offenses for which sentences were served concurrently whether those offenses shall be counted as one offense or as separate offenses [.]

Interpretation of a statutory provision is a question of law that is reviewed de novo. State v. Haddock, 141 Wn.2d 103, 3 P.3d 733 (2000).

The statute is clear that there will be some prior adult offenses which were served concurrently that shall be counted as one offense, as well as other prior adult offenses which were served concurrently that shall be counted as separate offenses. But the statute doesn't provide any guidance or direction as to which prior adult offenses for which sentences were served concurrently shall be counted as one offense or as separate offenses.

Considering that the "same criminal conduct" standard is not applicable to this part of the statute, what distinguishes one group of prior adult offenses served concurrently from any other group of prior adult offenses served concurrently? What might be the determinant factor of whether prior adult offenses served concurrently are counted as one offense or as separate offenses?

When looking at the plain language of the statute it's clear that the phrase "served concurrently" is the crux of determining whether to count prior concurrent offenses as one or as separate offenses. Therefore, the definition of "served concurrently" is the pertinent factor in this determination.

In LAWS OF 1995, ch. 316, sec. 1, the Legislature defined "served concurrently" by adding the following definition to RCW 9.94A.360(6)[1]:

> As used in this subsection (6), "served concurrently" means that:
> (i) The latter sentence was imposed with specific reference to the former;
> (ii) the concurrent relationship of the sentences was judicially imposed; and
> (iii) the concurrent timing of the sentences was not the result of a probation or parole revocation on the former offense.

[1] This provision was codified at RCW 9.94A.360(6)(b) and is currently found at RCW 9.94A.525(5)(b).

Consequent to this statutory definition of "served concurrently", prior offenses for which sentences were served concurrently were basically bifurcated into two groups for the purposes of the offender score :

(1) Prior concurrent offenses that meet the definition's criteria ; and
(2) prior concurrent offenses that do not meet the definition's criteria.

The petitioner, Meredith, contends that the most reasonable interpretation of former RCW 9.94A.360(6)(a) is that prior adult offenses that meet the statutory definition of "served concurrently" shall be counted as one offense in the offender score, and those that do not meet the statutory definition shall be counted as separate offenses.

Meredith's prior convictions meet the statutory definition of "served concurrently." Meredith's sentence for his 1992 prior conviction was judicially imposed to be served concurrently with specific reference to his sentence for his 1991 prior conviction and was not the result of a probation or parole revocation. See Appendix B.

Prior to the 1995 Legislature adding the definition of "served concurrently" to RCW 9.94A.360(6), the interpretation of the statute adopted by previous courts was that sentencing courts use discretion in determining whether to count prior adult offenses which were served concurrently as one or separate offenses. With no guidance from the statutory definition of "served concurrently" that previous interpretation was reasonable, but it also left the door open to the possibility of unjust or absurd results.

For purposes of former RCW 9.94A.360(6)(a), it would be utterly inconsistent if two defendants with identical conviction histories of prior adult concurrently served offenses were treated differently to one another with one defendant's prior convictions scored as one offense and the other defendant's

prior convictions scored as separate offenses. The equal protection clauses of both the Federal and State Constitutions require persons similarly situated with respect to the legitimate purpose of the law must receive like treatment. U.S. Const. Amend. 14 ; Wash. Const. art. 1, Sec. 12.

"[O]ur purpose is to preserve the integrity of the sentencing laws" and to avoid widely varying sentences. State v. Mendoza, 165 Wn.2d 913, 920, 205 P. 3d 113 (2009)(citing State v. Ford, 137 Wn.2d 472, 478, 973 P. 2d 452 (1999)).

By defining the term "served concurrently" with specific criteria that must be met, the Legislature provided guidance to the sentencing courts that would preclude the sort of aforementioned absurd result and avoid widely varying sentences that could be possible under the interpretation adopted by previous courts.

The most logical factor in determining whether prior adult offenses served concurrently shall be counted as one offense or as separate offenses is the statutory definition of the term "served concurrently."

A "determination" doesn't necessarily have to consist of unrestricted discretion. It can just as well be a finite decision that is based on certain limits or criteria.

That being said, and in light of the Legislature defining "served concurrently", the petitioner contends that the most reasonable interpretation of former RCW 9.94A.360(6)(a) is that the sentencing court shall make a finite determination to count those "other prior adult offenses for which sentences were served concurrently" that meet the statutory definition of "served concurrently" as one offense, and to count those "other prior adult offenses for which sentences were served concurrently" that do not meet the statutory definition of "served concurrently" as separate offenses.

This interpretation suggested by the petitioner does not take one outside of the plain meaning of the statute. Under this interpretation the sentencing

court must still make the required determination, but that the sentencing court base this determination on whether those prior adult offenses meet the statutory definition of "served concurrently."

To be reasonable, an interpretation must, at a minimum, account for all the words in a statute. State v. Johnson, 2014 WL 70549 (Wash. 2014). A statute is ambiguous if it is susceptible to two or more reasonable interpretations. State v. Garrison, 46 Wn. App. 52, 728 P. 2d 1102 (1986).

One other reasonable interpretation, mentioned previously, of former RCW 9.94A.360(6)(a), is that the sentencing court has unrestricted discretion whether to count other prior offenses for which sentences were served concurrently as one or as separate offenses, but, as argued previously, could lead to absurd or unjust results. If the statute is ambiguous, the courts must construe the statute so as to effectuate the legislative intent. State v. Elgin, 118 Wn. 2d 551, 555, 825 P. 2d 314 (1992).

"We are confident that the Legislature's true intent was to include one offense in criminal history when prior concurrent sentences were JUDICIALLY IMPOSED for more than one offense, regardless of whether the concurrent sentences arose out of the same or separate incidents." State v. Lara, 66 Wn. App. at 931.

If a criminal statute is ambiguous, the "rule of lenity" requires the court to interpret the statute in favor of the defendant absent legislative intent to the contrary. The rule of lenity requires the court to construe a statute strictly against the State in favor of the defendant where two possible constructions are permissible. State v. Breaux, 167 Wn. App. 166, 273 P. 3d 447 (Div. 1 2012). This rule was held applicable to the SRA in State v. Henderson, 48 Wn. App. 543, 740 P. 2d 329 (1987).

Meredith believes that the rule of lenity applies in his case since two or more reasonable interpretations seem possible. The most reasonable interpretation of former RCW 9.94A.360(6)(a) is that of which is championed by Meredith as it seems to best express the intent of the Legislature to count as one offense those prior adult offenses for which sentences were "truly" served concurrently. Meredith contends that his suggested interpretation is the reading required by the rule of lenity.

Meredith respectfully requests that this court remand for resentencing for a recalculation of Meredith's sentence consistent with the interpretation of the statute advocated by Meredith to count his prior judicially imposed concurrent offenses as one offense as the court in State v. Lara stated was the Legislature's true intent.

C. MEREDITH'S TWO PRIOR CONCURRENTLY SERVED CONVICTIONS SHOULD BE COUNTED AS ONE OFFENSE PURSUANT TO FORMER RCW 9.94A.360(6)(a) AND THE SUPREME COURT'S RULING IN STATE V. BOLAR

Bolar, State v. Bolar, 129 Wn.2d 361, 917 P.2d 125 (1996) is distinguishable from Meredith in that Bolar had four concurrently served adult convictions, two of which constituted the same criminal conduct and were counted at sentencing as one offense, and two that were not the same criminal conduct and were counted as separate offenses. State v. Bolar at 363. Meredith has two prior concurrently served adult convictions that were not the same criminal conduct and were counted as separate offenses.

The Supreme Court agreed with Bolar that the sentencing court was required to count all four of his prior concurrently served convictions as one offense pursuant to RCW 9.94A.360(6)(a) once the sentencing court decided to group together any of the prior convictions for which sentences were served concurrently. The Court remanded for resentencing "for re-calculation of Bolar's sentence consistent with this decision." Bolar at 367. Upon resentencing, the court counted all of Bolar's concurrently served convictions as one offense. See Appendix C.

As noted previously in this petition, former RCW 9.94A.360(6)(a) does not restrict the current sentencing court to the application of the same criminal conduct standard. State v. Lara, 66 Wn. App. at 931.

Meredith contends that his two prior concurrently served convictions should be counted as one offense pursuant to former RCW 9.94A.360(6)(a) just as Bolar's prior concurrently served convictions were counted as one offense. Must Meredith need to have a more extensive criminal history that includes additional concurrently served convictions, such as Bolar's, for his two concurrently served convictions to be counted as one

offense as Bolar's were?

Meredith respectfully requests this court to remand for resentencing for recalculation of Meredith's sentence consistent with the Supreme Court's ruling in Bolar and count Meredith's two prior concurrently served adult offenses as one offense pursuant to former RCW 9.94A.360(6)(a).

D. MEREDITH'S PRIOR CONCURRENTLY SERVED OFFENSES SHOULD BE COUNTED AS ONE OFFENSE PURSUANT TO FORMER RCW 9.94A.360(6)(a) AND STATE V. MCCRAW

The sentencing court in State v. McCraw, 127 Wn. 2d 281 (1995), counted each of McCraw's three groups of prior concurrently served adult offenses as one offense per group. McCraw at 285.

When the Supreme Court in McCraw upheld the sentencing court's use of discretion pursuant to RCW 9.94A.360(6)(a), the Court basically affirmed the sentencing court's ruling to count each group of McCraw's prior concurrently served adult convictions as one offense. McCraw at 290.

It's Meredith's contention, for purposes of former RCW 9.94A.360(6)(a), that defendants whose prior adult offenses meet the statutory definition of "served concurrently" should receive like treatment with that of other defendants whose prior adult offenses meet the statutory definition of "served concurrently" with respect to determining whether those offenses shall be counted as one or as separate offenses. Equal protection requires that persons similarly situated with respect to the legitimate purpose of the law must receive like treatment. U.S. Const. Amend. 14; Wash. Const. art. 1, sec. 12.

Meredith argues that both his and McCraw's prior adult offenses meet the statutory definition of "served concurrently", see Appendix ; see McCraw at 284-85, and that his prior concurrently served offenses should be treated the same as McCraw's and be counted as one offense in his offender score.

Meredith respectfully requests this court to remand for resentencing for recalculation of his sentence with instructions to count his two prior concurrently served convictions as one offense consistent with the sentencing court in State v. McCraw, pursuant to former RCW 9.94A.360(6)(a).

E. INEFFECTIVE ASSISTANCE OF COUNSEL AT SENTENCING

COUNSEL WAS INEFFECTIVE FOR FAILING TO OBJECT TO MEREDITH'S OFFENDER SCORE CALCULATION PERTAINING TO HIS PRIOR CONCURRENTLY SERVED OFFENSES PURSUANT TO FORMER RCW 9.94A.360(6)(a).

To demonstrate ineffective assistance of counsel, the defendant must show: (1) counsel's performance was deficient, and (2) the deficient performance prejudiced the defendant. Strickland v. Washington, 466 U.S. 668, 687, 104 S.Ct. 2052, 80 L.Ed 2d 674 (1984). U.S. Const. Amend. 6 ; State v. McFarland, 127 Wn.2d 322, 335, 899 P.2d 1251 (1995).

Meredith's counsel failed to object when the prosecutor stated that each of Meredith's two prior felonies will count as 3 points each. RP 613-14.

As previously argued in this brief, the sentencing judge failed to make the required determination on the record whether to count Meredith's prior adult concurrently served offenses as one or separate offenses pursuant to former RCW 9.94A.360(6)(a). The judge simply counted Meredith's prior offenses as separate offenses. RP 644.

Counsel's performance was deficient for not objecting to the calculation of Meredith's prior offenses pursuant to former RCW 9.94A.360 (6)(a), the applicable statute for the date of crime of October 29, 1994.

Counsel's representation fell below an objective standard of reasonableness. Counsel's deficient performance prejudiced Meredith because there is a reasonable probability that had counsel objected and brought forth a proper argument to count Meredith's prior offenses as

one offense pursuant to former RCW 9.94A.360(6)(a), the result of the proceeding would have been different.

Meredith respectfully requests this court to remand for resentencing for the required determination to be made pursuant to former RCW 9.94A.360(6)(a) with instructions to count Meredith's two prior concurrent offenses as one offense consistent with his arguments above, including following the Bolar and McCraw courts.

8. CUMULATIVE ERROR DOCTRINE

MR. MEREDITH ARGUES THAT THE CUMULATIVE EFFECT OF THE TRIAL ERRORS DEPRIVED HIM OF HIS RIGHT TO A FAIR TRIAL UNDER BOTH THE WASHINGTON CONSTITUTION ARTICLE I, SECTION 22 AND THE FOURTEENTH AMENDMENT

The cumulative effect of the trial court errors deprived Meredith of his right to a fair trial under both the State and federal constitutions. Under the Cumulative Error Doctrine, a defendant may be entitled to a new trial when errors, even though individually not reversible errors, cumulatively produced a trial that was fundamentally unfair, State v. Greiff, 141 Wn.2d 910, 929, 10 P.3d 390 (2000).

Under State v. Ezequiel Apolo-Albino, 173 Wn.2d 1009, 268 P.3d 941 (2011), "It appears that Washington courts have expanded this doctrine to include not only errors of the court, but also unreasonable conduct by defense counsel." See Goldman v. State, 57 So. 3d 274, 278 (Fla. Dist. Ct. App. 2011). (Reversing defendant's conviction

based on the cumulative effect of defense counsel's errors that did not individually satisfy prejudice prong) Malone v. Walls, 538 F. 3d 744, 762 (7th Cir. 2008) (Remanding to the district court to consider whether defense counsel's cumulative errors prejudiced defendant even though they did not rise to the level of ineffective assistance standing alone.)

Reversal is necessary if "it appears reasonably probable that the cumulative effect of those errors materially affected the outcome," State v. Johnson, 90 Wash. App. 54, 950 P. 2d 981 (1998).

Keeping in mind that this burden represents a fairly low threshold. See Sanders v. Ratelle, Supra (stating that a "reasonable probability" is actually a lower standard than preponderance of the evidence.)

CONCLUSION

Throughout this entire case Mr. Meredith's right to a fair trial and due process guaranteed by the Fourteenth Amendment was violated. The cumulative effect of defense counsel's deficient representation prejudiced Meredith to where there is a reasonable probability that, except for counsel's errors, the result of Meredith's trial would have been different.

Mr. Meredith respectfully requests that this court reverse his convictions and remand for a new trial, or at the very least send this case back for an evidentiary hearing or reference hearing to the totality of the issues raised in this Personal Restraint Petition and to be appointed competent counsel in the representation of future proceedings.

If this court does not conclude a reversal of the convictions is warranted, then Mr. Meredith respectfully requests that this court remand for resentencing with instructions to count his two prior adult concurrently served convictions as one offense in his offender score, or, at the very least, remand for resentencing for the sentencing court to make the required determination on the record pursuant to former RCW 9.94A.360(6)(a).

I, GARY MEREDITH, swear under laws of perjury that the entire contents of this personal restraint petition is true and correct.

Gary Meredith

GARY MEREDITH

DOC # 984777

APPENDIX A

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

STATE OF WASHINGTON,

Plaintiff,

vs.

GARY DANIEL MEREDITH,

Defendant.

DOB: 6/13/70
SID NO.: WA15494138
LOCAL ID:

CAUSE NO. 95-1-04949-6

JUDGMENT AND SENTENCE
(FELONY/OVER ONE YEAR)

NOV 2 1 2008

FILED
DEPT. 5
IN OPEN COURT
NOV 2 1 2008
Pierce County Clerk
By _____ DEPUTY

I. HEARING

1.1 A sentencing hearing in this case was held on 11-21-08

1.2 The defendant, the defendant's lawyer, BRETT PURTZER, and the deputy prosecuting attorney, JAMES S. SCHACHT, were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on June 10, 1996 by

[ ] plea [X] jury-verdict [ ] bench trial of:

Count No.: I
Crime: RAPE OF A CHILD IN THE SECOND DEGREE, Charge Code: (I37)
RCW: 9A.44.076
Date of Crime: 10/29/94
Incident No.: TPD 94 307 0871

Count No.: II
Crime: COMMUNICATION WITH A MINOR FOR IMMORAL PURPOSES, Charge Code: (I3)
RCW: 9.68A.090
Date of Crime: 10/29/94
Incident No.: SAME

[ ] Additional current offenses are attached in Appendix 2.1.
[ ] A special verdict/finding for use of deadly weapon other than a firearm was returned on Count(s).

089-146350

Office of Prosecuting Attorney
946 County-City Building
Tacoma, Washington 98402-2171
Telephone: 591-7400

[ ] A special verdict/finding for use of a firearm was returned on Counts_____.
[ ] A special verdict/finding of sexual motivation was returned on Count(s)_____.
[ ] A special verdict/finding of a RCW 69.50.401(a) violation in a school bus, public transit vehicle, public park, public transit shelter or within 1000 feet of a school bus route stop or the perimeter of a school grounds (RCW 69.50.435).
[ ] Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number):

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400(1)):

2.2 CRIMINAL HISTORY: Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

CRIME	DATE OF SENTENCING	SENTENCING COUNTY/STATE	DATE OF CRIME	ADULT OR JUV.	CRIME TYPE	CRIME ENHANCEMENT
RAPE 3	12/17/91		7/19/91	ADULT	SEX	
ASLT 3 W/SEX MOT	3/26/92		12/17/91	ADULT	SE X	

[ ] Additional criminal history is attached in Appendix 2.2.
[ ] Prior convictions served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(11)):

2.3 SENTENCING DATA:

	Offender Score	Serious Level	Standard Range(SR)	Enhancement	Maximum Term
Count I:	9	X	149-198 mos		LIFE
Count II:	9	III	51-60 mos		5yrs/$10,000

[ ] Additional current offense sentencing data is attached in Appendix 2.3.

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Telephone: 591-7400

4.2 CONFINEMENT OVER ONE YEAR: The defendant is sentenced as follows:

(a) CONFINEMENT: (Standard Range) RCW 9.94A.400. Defendant is sentenced to the following term of total confinement in the custody of the Department of Corrections:

198 months on Count No. I [ ] concurrent [ ] consecutive
60 months on Count No. II [ ] concurrent [ ] consecutive
____ months on Count No. ____ [ ] concurrent [ ] consecutive
____ months on Count No. ____ [ ] concurrent [ ] consecutive

Standard range sentence shall be [✓] concurrent [ ] consecutive with the sentence imposed in Cause Nos.: _____.

[X] Credit is given for 135 days served;

4.3 COMMUNITY PLACEMENT AND COMMUNITY CUSTODY RCW 9.94A.120. The defendant is sentenced to community placement for [~~X~~] one year [✓] **two years or up to the period of earned early release awarded pursuant to RCW 9.94A.150(1) and (2), whichever is longer.**

While on community placement or community custody, the defendant shall: 1) report to and be available for contact with the assigned community corrections officer as directed; 2) work at Department of Corrections-approved education, employment and/or community service; 3) not consume controlled substances except pursuant to lawfully issued prescriptions; 4) not unlawfully possess controlled substances while in community custody; 5) pay supervision fees as determined by the Department of Corrections; 6) residence location and living arrangements are subject to the approval of the department of corrections during the period of community placement.

(a) [ ] The offender shall not consume any alcohol;
(b) [X] The offender shall have no contact with: Victim [redacted] [redacted] [redacted] or his family
(c) [ ] The offender shall remain [ ] within or [ ] outside of a specified geographical boundary, to-wit: _____
(d) [ ] The offender shall participate in the following crime related treatment or counseling services: _____
(e) [X] The defendant shall comply with the following crime-related prohibitions: See Appendix F.
(f) [ ] OTHER SPECIAL CONDITIONS AND CRIME RELATED PROHIBITIONS:

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Tacoma, Washington 98402-2171
Telephone: 591-7400

APPENDIX B

APPENDIX C

7390936

95 AUG 13 AM 9:34
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

MATTHEW F. BOLAR

Defendant.

No. 94-1-07791-7

JUDGMENT AND SENTENCE

ON RESENTENCING

95 AUG 13 AM 9:34
KING COUNTY
SUPERIOR COURT CLERK
SEATTLE, WA.

COMMITMENT ISSUED AUG 13 1996

COPY TO SENTENCING GUIDELINES COMMISSION AUG 13 1996

95-402973

JUDGMENT NUMBER

PRESENTENCING STATEMENT & INFORMATION ATTACHED

I. HEARING

SUZANNE LEE ELLIOTT

1.1 The defendant, the defendant's lawyer, ~~BURNS PETERSON~~, and the deputy prosecuting attorney were present at the sentencing hearing conducted today. Others present were: _____

RESENTENCING ORDERED BY SUPREME COURT OPINION MANDATED 7-1-96;

1.2 ~~The state has moved for dismissal of count(s)~~ _____

II. FINDINGS

Based on the testimony heard, statements by defendant and/or victims, argument of counsel, the presentence report(s) and case record to date, and there being no reason why judgment should not be pronounced, the court finds:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on (date): 01-04-95 by plea of:

Count No.: I Crime: RESIDENTIAL BURGLARY
RCW 9A.52.025 Crime Code 02310
Date of Crime 11-23-94 Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code _____
Date of Crime _____ Incident No. _____

Count No.: _____ Crime: _____
RCW _____ Crime Code _____
Date of Crime _____ Incident No. _____

☐ Additional current offenses are attached in **Appendix A.**

SPECIAL VERDICT/FINDING(S):

(a) ☐ A special verdict/finding for being armed with a **Firearm** was rendered on Count(s): _____

(b) ☐ A special verdict/finding for being armed with a **Deadly Weapon** other than a **Firearm** was rendered on Count(s): COUNT I

(c) ☐ A special verdict/finding was rendered that the defendant committed the crimes(s) with a **sexual motivation** in Count(s): _____

(d) ☐ A special verdict/finding was rendered for **Violation of the Uniform Controlled Substances Act** offense taking place ☐ in a school zone ☐ in a school ☐ on a school bus ☐ in a school bus route stop zone ☐ in a public park ☐ in public transit vehicle ☐ in a public transit stop shelter in Count(s): _____

(e) ☐ **Vehicular Homicide** ☐ Violent Offense (D.W.I. and/or reckless) or ☐ Nonviolent (disregard safety of others)

(f) ☐ Current offenses **encompassing** the same criminal conduct and counting as one crime in determining the offender score (RCW 9.94A.400(1)(a)) are: _____

ADCTG

2.2 **OTHER CURRENT CONVICTION(S):** Other current convictions listed under different cause numbers used in calculating the offender score are (list offense and cause number): _____

POSTED

62

2.3 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
(a) ROBBERY 1	07-19-84	ADULT	841012273	KING COUNTY
(b) VUCSA	04-28-88	ADULT	871047420	KING COUNTY
(c) VUCSA	04-28-88	ADULT	871047420	KING COUNTY
(d) VUCSA	04-28-88	ADULT	871047420	KING COUNTY

■ Additional criminal history is attached in **Appendix B.**

☒ Prior convictions (offenses committed before July 1, 1986) served concurrently and counted as one offense in determining the offender score are (RCW 9.94A.360(6)(c)): b, c, d, e

☐ One point added for offense(s) committed while under community placement for count(s) _____

2.4 **SENTENCING DATA:**

SENTENCING DATA	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE	ENHANCEMENT	TOTAL STANDARD RANGE	MAXIMUM TERM
Count I	6 3	IV			~~33~~ TO ~~43~~ MONTHS	10 YRS AND/OR $20,000
Count					63 to 83	
Count					13 to 17	

Additional current offense sentencing data is attached in **Appendix C.**

2.5 **EXCEPTIONAL SENTENCE:**

☐ Substantial and compelling reasons exist which justify a sentence above/below the standard range for Count(s) ____ _____. Findings of Fact and Conclusions of Law are attached in Appendix D. The State ☐ did ☐ did not recommend a similiar sentence.

III. JUDGMENT

IT IS ADJUDGED that defendant is guilty of the current offenses set forth in Section 2.1 above and Appendix A.

☐ The Court DISMISSES Count(s) _____

IV. ORDER

IT IS ORDERED that the defendant serve the determinate sentence and abide by the other terms set forth below.

4.1 **RESTITUTION AND VICTIM ASSESSMENT:**

☐ Defendant shall pay restitution to the Clerk of this Court as set forth in attached **Appendix E.**

☐ Defendant shall **not** pay restitution because the Court finds that extraordinary circumstances exist, and the court, pursuant to RCW 9.94A.142(2), sets forth those circumstances in attached **Appendix E.**

☐ Restitution to be determined at future hearing on (Date)_____ at _____ .m. ☐ Date to be set.

☐ Defendant waives presence at future restitution hearing(s).

Defendant shall pay Victim Penalty Assessments pursuant to RCW 7.68.035 in the amount of $100 if all crime(s) date prior to 6-6-96 ~~and $500 if any crime date in the Judgment is after 6-5-96~~.

4.2 **OTHER FINANCIAL OBLIGATIONS:** Having considered the defendant's present and likely future financial resources, the Court concludes that the defendant has the present or likely future ability to pay the financial obligations imposed. The Court waives financial obligation(s) that are checked below because the defendant lacks the present and future ability to pay them. Defendant shall pay the following to the Clerk of this Court:

(a) ☐ $_____, Court costs; ☒ Court costs are waived;

(b) ☒ $ 342, Recoupment for attorney's fees to King County Public Defense Programs, 2015 Smith Tower, Seattle, WA 98104; ☐ Recoupment is waived (RCW 10.01.160);

(c) ☐ $ _____, Fine; ☐ $1,000, Fine for VUCSA; ☐ $2,000, Fine for subsequent VUCSA; ☐ VUCSA fine waived (RCW 69.50.430);

(d) ☐ $_____, King County Interlocal Drug Fund; ☐ Drug Fund payment is waived;

(e) ☐ $_____, State Crime Laboratory Fee; ☐ Laboratory fee waived (RCW 43.43.690);

(f) ☐ $_____, Incarceration costs; ☐ Incarceration costs waived (9.94A.145(2));

(g) ☐ $_____, Other cost for:_____.

4.3 **PAYMENT SCHEDULE:** Defendant's **TOTAL FINANCIAL OBLIGATION** is: $ 442.00. The payments shall be made to the King County Superior Court Clerk according to the rules of the Clerk and the following terms:

☐ Not less than $ _____ per month; ☒ On a schedule established by the defendant's Community Corrections Officer. ☐ :_____ **The Defendant shall remain under the Court's jurisdiction and the supervision of the Department of Corrections for up to ten years from date of sentence or release from confinement to assure payment of financial obligations.**

SUPERIOR COURT OF WASHINGTON FOR KING COUNTY

STATE OF WASHINGTON

Plaintiff,

v.

MATTHEW F. BOLAR

Defendant.

No. 94-1-07791-7

APPENDIX B
JUDGMENT AND SENTENCE -
(FELONY) - ADDITIONAL CRIMINAL HISTORY

2.3 The defendant has the following additional criminal history used in calculating the offender score (RCW 9.94A.360):

Crime	Sentencing Date	Adult or Juv. Crime	Cause Number	Location
(e) BAIL JUMPING	04-28-88	ADULT	871047420	KING COUNTY
(f) VUCSA	11-09-89	ADULT	891021257	KING COUNTY

☐ The following prior convictions were counted as one offense in determining the offender score (RCW 9.94A.360(11)):

Date: 8 Aug 96

JUDGE, King County Superior Court

DECLARATION OF SERVICE BY MAIL
GR 3.1

I, GARY MEREDITH, declare and say:

That on the 17TH day of August, 2014, I deposited the following documents in the Stafford Creek Correction Center Legal Mail system, with First Class U.S. Mail, pre-paid postage affixed, under cause No. 38600-3-II:

Motion To Amend Brief In Support of Personal Restraint Petition.

addressed to the following:

COURT OF APPEALS OF THE
STATE OF WASHINGTON, DIV. 2
950 Broadway, Suite 300
Tacoma, WA 98402

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my belief.

DATED THIS 17TH day of August, 2014, in the City of Aberdeen, County of Grays Harbor, State of Washington.

Signature

GARY MEREDITH
Printed Name
c/o [DOC 984777 UNIT H4-B42
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WAY
ABERDEEN WA (98520)]

August 7, 2014

Dear Court Clerk,

Enclosed is my brief in support of my Personal Restraint Petition form that was mailed to you on August 4, 2014.

I am requesting a time extension of 120 days as my intentions are to amend this brief with better clarification as well as a typed version that meets the requirement of a PRP brief, i.e. margin spacing, letters per line, etc., that will make for an easier reading of it. As well, I may need to provide additional pertinent caselaw.

My law library access here at Stafford Creek is limited to a call out system, where priority legal defendants or inmates receive first access. Additionally, the research computers here have been malfunctioning on a daily basis for many months now. See Affidavit that I enclosed in my Personal Restraint Petition form dated August 4, 2014.

I request, respectfully, that you grant me a time extension of 120 days so that I adequate time necessary to make any proper adjustments. I thank you for your time.

Sincerely,

GARY MEREDITH
DOC # 984777, H4-B42
Stafford Creek Corrections Center
191 Constantine Way
Aberdeen, WA 98520

Gary Meredith

Court of Appeals No. 38600-3-II

WASHINGTON STATE COURT OF APPEALS

DIVISION TWO

In the Personal Restraint Petition of: GARY MEREDITH, Petitioner	NO. 38600-3-II MOTION TO AMEND BRIEF IN SUPPORT OF PERSONAL RESTRAINT PETITION

I. IDENTITY OF PARTY

Gary Meredith is the petitioner in this case. Mr. Meredith asks this court to grant the relief designated in Part II.

II. RELIEF SOUGHT

Mr. Meredith asks that the court allow him to file an Amended Brief In Support of Personal Restraint Petition.

III. FACTS RELEVANT TO MOTION

Due to an oversight, the Table of Authorities as well as pertinent documents relating to Appendix B were not included in Mr. Meredith's original Brief In Support of

his Personal Restraint Petition. These items were listed in the original Table of Contents. Mr. Meredith wishes to correct this oversight. Also, Mr. Meredith wishes to provide one additional argument recently discovered through due dilligence.

IV. RELEVANT LEGAL AUTHORITIES

CrR 15(a) provides for amendments by leave of the court which "shall be freely given when justice so requires." This court always retains discretion to allow a pleading to be amended.

V. CONCLUSION

Allowing Mr. Meredith to amend his petition serves the interests of justice by giving him the opportunity to present a Personal Restraint Petition that is both complete and easier to read. Mr. Meredith respectfully requests this court to grant the Motion.

GARY MEREDITH, DOC # 984777
Stafford Creek Corrections Center
191 Constantine Way H4 B42
Aberdeen, WA 98520

COURT OF APPEALS DIV. II COURT OF WASHINGTON

IN AND FOR THE COUNTY OF PIERCE

GARY MEREDITH, Plaintiff / Petitioner, v. STATE OF WASHINGTON, Defendant / Respondent	No. 38600-3-II AFFIDAVIT OF: GARY MEREDITH

I, Gary Meredith, declare and say:

Going back to May 30, 2014, when the Stafford Creek Correction Center (S.C.C.C.) began to log the instances when the Law Library computers have gone down, the following dates were recorded in the S.C.C.C. Law Library's Check Out Log Book indicating, at minimum, each time the computer's went down: 5/30, 5/31, 6/1, 6/3, 6/4, 6/5, 6/6, 6/7, 6/8, 6/9, 6/10, 6/11, 6/12, 6/13, 6/15, 6/17, 6/18, 6/19, 6/20, 6/21, 6/22, 6/23, 6/24, 6/25, 6/26, 6/27, 6/28, 6/29, 7/1, 7/3, 7/4, 7/6, 7/7 (twice), 7/8, 7/9, 7/13 (twice), 7/14, 7/17, 7/20, 7/23, 7/24 (twice), 7/25, 7/28 (twice), 7/30 (twice).

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

DATED THIS 31 day of July, 2014, in the County of Grays Harbor, State of Washington.

Gary Meredith

GARY MEREDITH

DOC# 984777 Unit H4 B42
STAFFORD CREEK CORRECTIONS CENTER
191 CONSTANTINE WY
ABERDEEN WA 98520

STATE OF WASHINGTON)
) ss.
COUNTY OF GRAYS HARBOR)

I certify that I know or have satisfactory evidence that the above named Plaintiff / Petitioner is the person who appeared before me, and the said person acknowledged that he signed this instrument and acknowledged it to be his free and voluntary act for the uses and purposes mentioned in the instrument.

DATED THIS 31 day of July, 2014.

John S. Thompson

NOTARY PUBLIC in and for the State of Washington, residing at
Mason County
My commission expires 6/6/18

JOHN S THOMPSON
COMMISSION EXPIRES
NOTARY
PUBLIC
6-6-18
STATE OF WASHINGTON